

condition of Spur in the year 1943? Will you describe it briefly? A. I would like you to explain that question a little to me.

Q. All right. Were you making money, or were you losing money? A. 1943?

Q. Yes. A. I don't recall the net return of 1943, but I do recall that gasoline controls set in in 1942. We were limited, first, to a 72-hour week, and the controls of amount sold then set in and were in existence at that time, so I would think, offhand, that our situation was badly worsened.

Q. Do you have any definite and independent recollection of whether or not the company made or lost money in the year 1943? A. No, I don't.

Q. You don't know? A. No.

Q. Do you recall whether the company made or lost money in the year 1944? A. Yes, it lost money, I think, in 1944.

Q. Do you recall whether you made or lost money 1802 in the year 1945? A. No, I don't recall.

Q. You do definitely recall, though, that the company in 1941 made better than \$400,000 net? A. Yes.

Q. You do recall that? A. Yes.

Q. Mr. Houghland, do you recall that all during the war years, 1942, 1943, 1944, and 1945, the company lost money? A. Well, I recall that we were in a lot of trouble and lost money in some of those years, but I can't recall which years it was.

Q. Do you recall if you lost money every year? A. Well, I know it was very tough. I think—I don't recall just exactly the financial detail of it.

Q. Is it your testimony at the present time that you don't recall whether the company made money in the years 1942, 1943, 1944, and 1945? A. No; I don't recall just exactly how the financial sheet turned out in those years. I don't remember. It was very tough.

Q. What do you mean by saying, "it was very tough"?
 A. Well, I mean we were under great restrictions on gasoline sales.

Q. Did you pay any dividends during those years?
 A. I don't believe we did in 1943, 1944, or 1945. I don't believe we did. In 1942 we may have paid a dividend—I am sure we did—on 1941 business.

Q. In 1942, you paid a dividend based on 1941 business?
 A. Yes.

Q. But you don't recall whether you paid a dividend in 1943 based upon 1942 business?
 A. No, I don't.

Q. Do you recall whether or not you received any bonus under your management contract in the years 1942, 1943, 1944, or 1945?
 A. I received one in 1942 for 1941 business. I recall that.

Q. That is the last one you received until after the war, isn't it?
 A. I don't know.

Q. Don't recall?
 A. I don't recall.

Q. Do you have any income from your company—that is, the Spur Company—other than your salary and your dividends?
 A. What do you mean: "income other than"?

Q. Do you receive anything else from Spur?
 A. I receive rental on property in Cincinnati, Ohio.

Q. I am not asking about your other income; I am asking about your other income from Spur; and by "other income"

I mean income other than your salary or your bonus arrangement.
 A. I receive a rental check on the property at Cincinnati, Ohio, from Spur.

Q. That is something which you personally own in Cincinnati?
 A. That is right.

Q. How much do you receive for that?
 A. Ninety-nine dollars, I think it is, a month.

Q. That is the only income which you receive from Spur—
 A. Other than this I have described.

Q. Other than this which you have described?
 A. Yes.

Q. Yet it is your testimony that you do not recall whether

or not you received any bonus under your management contract because of profits during the years 1942, 1943, 1944, or 1945? A. I received a bonus, in 1942; I recall that.

Q. You have explained that? A. I have explained that. I don't recall 1943, 1944, or 1945.

Q. I will ask you to look at Plaintiff's Exhibit 163. Will you read that? A. Do you wish me to read it aloud?

Q. No; read it to yourself. A. (After examining 1805 paper:) Yes, sir.

Q. Now will you read Plaintiff's Exhibit 164? A. (After examining paper:) Yes, sir.

Mr. Ingoldsby: The pertinent portions of Plaintiff's Exhibit 163 I should like to read into the record. This is a letter to Mr. James Markham, Assistant Alien Property Custodian, from Mason Houghland, president, Spur Distributing Company, Inc., dated October 25, 1943. The pertinent portion says—

Mr. Burling: I object to the characterization as "pertinent."

Mr. Ingoldsby: The portion which I wish to read at the present time, which I consider pertinent, is as follows:

"The indicated military demand, or anything near it, will certainly eliminate 'A' and 'B' coupons. It will incidentally close down the Spur Company. If we are to protect ourselves by arranging credits, action must be taken at once. I don't see how it could be done later.

"The conversion of the A, B, C. stock into first mortgage bonds would certainly strengthen your condition and would enable the American stockholders to save themselves.

"We will be grateful if a decision can be arrived at upon this matter."

Plaintiff's Exhibit 164 is a letter to Mr. Houghland from S. J. Crowley, Chief, Division of Business Operations, in which he states:

"Dear Mr. Houghland:

"I am in receipt of your offer of May 28, 1943—"

I beg your pardon.

Will you mark this, please, Mr. Clerk, as Plaintiff's Exhibit 165? I will strike the reading of Exhibit 164; it was an inadvertence.

(Copy of telegram from James E. Markham to Mason Houghland, October 30, 1943, was marked as Plaintiff's Exhibit 165 for identification.)

By Mr. Ingoldsby:

Q. Will you read that, please? Just read it to yourself (handing Plaintiff's Exhibit 165 to the witness). A. (After examining paper:) Yes, sir.

Mr. Ingoldsby: I guess we had better put these in as exhibits. You know what these are, don't you?

Mr. Burling: Yes.

Mr. Ingoldsby: I should like to offer at this time Plaintiff's Exhibits 165, 166, and 167.

(Annual report for 1944 and annual report for 1945 were marked as Plaintiff's Exhibits 166 and 167, respectively, and offered in evidence.)

By Mr. Ingoldsby:

Q. Mr. Houghland, I will ask you to look over Plaintiff's Exhibit 166, which purports to be the annual report 1807 of the Spar Distributing Company for the year 1944; and then will you look at Plaintiff's Exhibit 167, which is the annual report of the Spar Distributing Company for the year 1945? Will you look please, at the

balance sheet and the financial statement and then please explain to the Court whether or not those documents refresh your recollection as to whether the Spur Company made or lost money in the years 1943, 1944, and 1945.

A. In the year 1944, which is the one that I have in my hand, it lost money, as I believe I told you. I recall that in 1944 it lost money.

Q. How much was that? A. Ninety thousand dollars.

Q. That was a \$90,000 loss after a tax adjustment of \$74,000; is that correct? A. Yes, sir.

Q. And the tax adjustment, of course, was for money which had been earned in prior years? A. That is correct.

Q. So without the adjustment you would have lost \$90,000 plus \$74,000? A. Yes, sir.

Q. Now, will you look at the next one? A. Yes, sir.

Q. Will you tell the Court, please, what it is you 1808 have in your hands there? A. It is the annual report of the Spur Distributing Company for the year 1945.

Q. Does that refresh your recollection regarding the operation of the company in a profit or loss condition? A. Yes, sir.

Q. For that year? A. Yes, sir.

Q. Will you tell the Court what the company did in that year? A. It lost \$94,000.

Q. Was that after a tax adjustment also? A. No, sir.

Q. There was no tax adjustment in the year 1945? A. No, sir.

Q. I will ask you, again, to look at Plaintiff's Exhibit 166, and I will ask you particularly to look at the balance sheet dated December 31, 1944. I will ask you if you see there a comparison with the year 1943. A. Yes, sir.

Q. From that comparative balance sheet are you able to state whether the company made or lost money in 1943?

A. No, I am not.

Q. You are not able to state from that? A. No.

1809 Mr. Burling: If Your Honor please, I appreciate the wide latitude Your Honor has granted me in cross examination, and I do not mean to object, but I do think I may properly object on the ground of relevancy here. I don't know whether the interrogation is with regard to the years after the Government took over the majority stock—

The Court: Have you any further questions along this line?

Mr. Ingoldsby: Not a great many, Your Honor, but I wanted to show the bias and the interest of the witness. I do not say that there is—

The Court: Do you mean that he has lost money after the war?

Mr. Ingoldsby: No; I intend to show that this witness made every effort within his power to acquire the stock of the Spur Distributing Company.

Mr. Burling: I suggest we get to that point.

Mr. Ingoldsby: We are getting there just as quickly as we can.

The Court: Do you mean that he deliberately caused losses; is that it?

Mr. Ingoldsby: No, Your Honor. I will make an offer of proof at this time.

The Court: I do not want to lead you.

Mr. Ingoldsby: I shall be delighted to make it. I
1810 want to show, first of all, that in 1943, at the time the company was losing money, Mr. Houghland endeavored to establish a bond issue for the purpose of eliminating the stock vested by the Alien Property Custodian which belonged to Mr. von Opel. Needless to say, if that had been done, if 73,000 shares of stock were taken out of existence, it would certainly change the position of this witness and a group friendly to him who also owned stock.

Mr. Burling: It would save a great deal of time if counsel would directly ask Mr. Houghland if that is a fact.

Mr. Gallagher: I think Mr. Burling's remarks come a little bit untoward. It will take Mr. Ingoldsby another five or ten minutes before he reaches that point. We have sat this out for many a day.

The Court: All right.

By Mr. Ingoldsby:

Q. Mr. Houghland, I refer again to Plaintiff's Exhibit 166. This does not have any page number, but it is the figure on the right-hand side under the column "1943," "Loss before tax adjustment \$196,000." You agree that that figure is there? A. \$196,344, yes.

Q. Does that refresh your recollection as to whether or not the company made or lost money in 1943? A. Well, we had a tax adjustment of \$210,000 in that year, 1811 so it shows a \$13,000 profit reported.

Q. When you get a tax adjustment for a prior year, do you take that into account in determining whether or not you made or lost money for the current year? A. Yes, sir.

Q. You do. Didn't you determine that for that the current year you lost \$196,000 and that you received a tax adjustment from prior years? A. I leave that to the auditors.

Q. I was asking you how you considered it. A. I am not much of an auditor.

Mr. Ingoldsby: I wish to read into the record at this time Plaintiff's Exhibit 165, which is a telegram to Mason Houghland, Spur Distributing Company, Inc., from James E. Markham, Deputy Alien Property Custodian, dated October 30, 1943. The wire reads as follows:

"It appears that it is not appropriate at this time to give approval to the proposal to convert stock into bonds in

view of the fact that the question of disposition of property belonging to an internee is under consideration by the Attorney General. We are satisfied that if we attempted to conform to this proposal injunction proceedings might be brought against us by internee's attorneys. The Attorney General's opinion when received may change this situation. If so we will advise you."

1812

By Mr. Ingoldsby:

Q. The question I want to ask you, Mr. Houghland is, will you explain to the Court your purpose in retiring the stock held by the Custodian for bonds during the period when the company was losing money? A. Yes, sir. I hoped to free the company from German ownership.

Q. Was that your reason? A. Yes.

Q. Was that your only reason? A. No. I felt we were going to continue in a period of bad operations and that we perhaps would strengthen ourselves greatly if we had this arrangement made; that we would do a better job; that it was not very popular to have German ownership in a retail organization in the United States when we were at war with Germany.

Q. You have stated that. Will you explain, please, how you intended to strengthen the company by incurring a bonded indebtedness? A. There would have been no strengthening of the company.

Q. Did I understand you to say that you expected to strengthen the company by doing this? A. I expected to strengthen the company by relieving it of German ownership.

1813 Q. Then, that was your only reason for doing this; is that correct? A. Doubtless.

Q. Isn't it a fact that the reason you attempted to do this was so that von Opel would not longer have control of the majority stock of the company? A. My reason was that German interests would not longer have control or the controlling stock of the company.

Q. Weren't you at the same time interested in getting control of the stock of the company for yourself or for your group? A. Yes; I would like to have had control of the stock. I don't believe I could have had it for myself, but I would like to have had control in American hands.

Q. And particularly your hands? A. I daresay. I would have been very grateful if it had been in my hands.

Q. So that was an additional reason for your efforts to transfer the von Opel stock to bonds? A. Yes.

Q. If the Government had accepted your proposal, it would have cost the company about \$50,000 a year, wouldn't it? A. I don't recall.

Q. Do you recall—wasn't your proposal to give 1814 the Government bonds based upon the book value of the stock? A. I don't recall the details of the proposal now.

Q. Who worked out the details? A. I don't recall that.

Q. You don't recall who did that? A. No.

Q. Didn't you consider that as a matter of major importance? A. I imagine the details were worked out by Mr. Sims, the lawyer, but I don't recall the details of it.

Q. Mr. Sims is connected with the firm of Bass, Berry, and Sims, who are your attorneys in Nashville? A. That is correct.

Q. Is that the same firm that are attorneys for the American National Bank in Nashville? A. Yes, sir.

Q. Is that the name of the bank? A. Yes, sir.

Q. You think, now, that Mr. Sims was the one who worked out the details of that plan? A. I think so.

Q. Under that plan, had it gone through, wouldn't the stock which you owned double in yield if and when the company made money? A. When they paid off the bonds, it would.

1815 Q. Well, whether they paid off the bonds or not, based upon the earnings of Spur for 1946 and 1947, if you had a 5 per cent debenture to meet, the remaining

stockholders would be better off than they would have been if the common stock had remained outstanding, wouldn't they? A. Whenever this had been paid off, they would have been, yes.

Q. Do I understand your testimony to be, then, that had this plan gone through, the remaining stockholders would not have made any additional money from dividends until the bonds had been retired? A. Not if I had been president of the company—they would not.

Q. Oh, you mean you would have retired the bonds before you would have paid out dividends? A. That is right.

Q. Which would have had the effect of increasing the equity of the remaining stockholders rather than paying out profits; isn't that correct? A. When you discharged the indebtedness, they would have been.

Q. Would you say that this was unusual procedure to have taken during a period when the company was losing money? A. I haven't had wide enough experience with corporate practice to know whether it is unusual or not.

1816 Mr. Ingoldsby: I offer in evidence Plaintiff's Exhibit 168, which also came from your files.

Mr. Burling: No objection.

(Minutes of special meeting, board of directors, Spur Distributing Company, Inc., November 9, 1944, was marked as Plaintiff's Exhibit 168 and offered in evidence.)

Mr. Ingoldsby: Plaintiff's Exhibit 168 purports to be a letter to Mr. W. D. Bradford, Assistant, Office of Alien Property Custodian, Washington, D. C., signed by H. D. Hines, of the Spur Distributing Company, and the letter includes or has attached thereto a copy of the Minutes of Special Meeting of the Board of Directors of Spur Distributing Company held on November 9, 1944.

By Mr. Ingoldsby:

Q. Mr. Houghland, do you at this time have any independent recollection of a meeting of the board of directors on November 9, 1944? A. Yes, sir.

Q. You do remember that? A. Yes.

Q. Then, do you recall—Let me put it this way: What particular significance does that meeting of the board of directors have for you? I will change the question: How is it you remember that particular meeting? A. Well, it involved a tremendous amount of activity and 1817 controversy thereafter.

Q. Do you mean that the reason you recall that particular meeting of the board of directors was that that was the first time that the problem was taken up with the board of directors of increasing the stock of Spur? A. No.

Q. What do you mean? A. Why, I mean it was a very momentous occasion. It involved me and the company and a very considerable controversy with the Alien Property Custodian.

Q. When was the last time that you read the minutes of this meeting? A. I don't recall; not too long ago.

Q. Give us your best recollection of how long ago. A. Two weeks.

Q. You read that in preparation for your testimony here, did you? A. Yes.

Q. Do you recall reading there a statement to the effect—and I quote:

"He pointed out that by careful and painstaking investigation the Alien Property Custodian had finally established beyond the question of a doubt that Uebersee Finanz-Korporation, A. G., while a Swiss corporation, held the stock for the beneficial ownership of the von Opel 1818 family, all of whom were German nationals and most of whom reside in Germany and have actively aided the German war efforts in the production of aircraft.

tanks, and rockets, it being commonly understood that the von Opels were the real inventors of the rocket principles for military use."

Do you recall reading that statement? A. Yes.

Q. Having read that, do you recall having made it?

A. No, I don't recall having made it, but I am sure it is so.

Q. You accept this as so? A. Yes.

Mr. Burling: We stipulate that this is correct.

Mr. Gallagher: That is, that he made it?

Mr. Burling: No.

By Mr. Ingoldsby:

Q. My question is, Who told you that it had been "established beyond the question of a doubt that Uebersee Finanz-Korporation, A. G., while a Swiss corporation, held the stock for the beneficial ownership of the von Opel family"? A. Mr. Cecil Sims.

Q. Mr. Sims? A. Yes.

Q. Mr. Sims is your lawyer? A. Yes, sir.

1819 Q. Did he tell you where he got the information?

A. Yes, sir.

Q. Where did he get it? A. He got it from a case in which the von Opels were involved, called the Gold Case in 1935, a Federal case in New York.

Q. Did you have a lengthy conversation with Mr. Sims about this? A. Yes.

Q. I understand that your statement says:

"He"—meaning you—"pointed out that by careful and painstaking investigation the Alien Property Custodian had finally established beyond the question of a doubt."

You did make that statement, did you? A. I imagine so; it is there.

Q. Then, who in the Alien Property Custodian's office did Mr. Sims attribute the statement to? A. I don't know.

Q. Well, your best authority for that statement at the

present time, you mean, is Mr. Sims, your own lawyer; is that correct? A. That is correct.

Q. You never talked to anyone in the Alien Property Custodian's office prior to the time you made that 1820 statement, did you? A. I talked to everybody in the Alien Property Custodian's office, I think.

Q. Well, I assume you did. My question should have been, You did not receive any information from anyone in the office of the Alien Property Custodian— A. Yes, I did.

Q. (Continuing) from anyone who stated that they, after a careful and painstaking investigation, had established these facts beyond any doubt? A. Yes.

Q. That is my question: Who gave you that information? A. I attended a meeting in Mr. Martin's office. He called over a man from the Department of Justice, whose name I don't recall, and called in a lawyer from the Alien Property office, and there was a general discussion at that time, and that was the purport of the discussion Mr. Sims had with me at the time.

Q. You really got your information, not from Mr. Sims' reading of the Gold case, but you got it from the Department of Justice itself; is that correct? A. Well, they were introduced to me as two lawyers from the Department of Justice. As far as getting the information is concerned, I got the information from Mr. Sims. You asked me did I ever talk to anybody in the Department of Justice about it. I told you I did, and who, and 1821 everybody, I think.

Q. Did you talk to them about this statement before you made the statement? A. About that statement?

Q. Yes. A. No.

Q. I see. It was on Mr. Sims' statement, then, that you made the statement? A. No, I wouldn't say so—on his say so.

Q. On whose say so? A. I don't understand exactly what you mean by "say so."

Q. On the information provided by Mr. Sims? A. I would say that was largely true, yes.

Q. You knew at the time you made this statement that it was incorrect, didn't you? A. No.

Q. You didn't know that? A. No.

Q. Contained in the statement is the following: that "the Alien Property Custodian had finally established beyond the question of a doubt that Uebersee Finanz-Korporation A. G., while a Swiss corporation, held the stock for the beneficial ownership of the von Opel family, all of whom were German nationals and most of whom 1822 reside in Germany and have actively aided the German war efforts in the production of aircraft, tanks and rockets, it being commonly understood that the von Opels were the real inventors of the rocket principle for military use."

A. Do you wish me to tell where I got that information?

Q. No; I won't ask that question. You knew that that statement was incorrect, didn't you? A. No.

Mr. Burling: I object to that statement. It is correct. You have not gone into it. It is proved beyond shadow of a doubt that the Opel plants produced tanks for Germany.

The Court: He answered "No."

By Mr. Ingoldsby:

Q. Didn't you testify this morning that you learned that the Opel plant had been sold to General Motors? A. Yes.

Q. You knew that after 1931 the Opels did not own the old Opel Works, didn't you? A. Yes.

Q. You knew that General Motors did own it? A. Yes.

Q. So if there was any production from this plant, it was the old Opel plant and not the plant now owned by the Opels?

1823 / Mr. Burling: I object on the ground that the testimony has been clear that Wilhelm von Opel was chairman of the board of Adam Opel—

The Court: What are you trying to prove?

Mr. Ingoldsby: I am trying to prove that the statements were false and that the witness knew that they were false.

Mr. Burling: It is not false. It is what Fritz von Opel has stated and what Wilhelm von Opel has stated by deposition.

The Court: I do not think I am trying that issue here. Are you trying to prove that he made a false statement?

Mr. Ingoldsby: Yes.

The Court: In connection with what?

Mr. Ingoldsby: This, Your Honor, is all prefatory to the stock increase plan which the board of directors put through shortly after this. I think that surely the opportunity for argument should be afforded to show that as a result of some of these statements a stock plan was put through to increase the stock, so as to disturb the control which was formerly held by Mr. von Opel.

The Court: Suppose you establish that. Then what?

Mr. Ingoldsby: Then, I think I have established a very substantial interest on the part of this witness.

The Court: He had admitted that, hasn't he? Hasn't he admitted it?

1824 Mr. Ingoldsby: He has admitted that he would like to have acquired the stock.

The Court: I think he admitted that he took steps to acquire it; or did he?

Mr. Burling: I think I have tried to concede it. I tried twenty minutes ago by my watch. Mr. Gallagher said it would take five more minutes. I still offer to concede that this witness tried to get the Custodian to sell the shares which were vested, taken away from the von Opels.

Mr. Ingoldsby: That is all fine and dandy for stipulation; but our contention is that the witness went so far—we wish to show the extent to which the witness went in

attempting to acquire interests which were held by von Opel. That being the situation, I think his testimony must of necessity be colored.

The Court: I will permit you to go ahead. I am not going to rule on whether I think you are bound by his answer or not. It may be that this is collateral and that you are bound by the answer, but I am going to permit him to answer within reasonable bounds. He said it was not true. So I will let it stand and rule later.

Mr. Ingoldsby: Your Honor, I do not want to appear argumentative; I simply want to point out that I do not intend to pursue the matter much further, but I do want to show that the lengths to which the witness went in 1825 in the attempted acquisition of this stock were such that they were ultimately designated as illegal activity. That is what I am leading up to.

The Court: I doubt whether that would be material matter.

Mr. Ingoldsby: Designated by the Custodian.

The Court: You can show anything that tends to show bias or untimely or undue interest to gain control of the company.

Mr. Burling: I think if there is to be any showing of designation of illegality, it should be by proof and not by counsel's characterization.

The Court: I have already said I will not draw that conclusion. I will permit this. The only thing I do not want to do is to get off on some collateral issue here. You understand what I mean.

Mr. Ingoldsby: I understand what you mean.

The Court: I do not know whether Mr. von Opel's father, as chairman of the board of the von Opel Works, was furnishing tanks or rockets or planes. I do not think I can try that issue here.

Mr. Ingoldsby: I do not intend to pursue that matter any further.

Would you mark these next three documents, please, Mr. Clerk?

1826. (Minutes of special meeting of board of directors, Spur Distributing Company, November 6, 1944, were marked as Plaintiff's Exhibit 169.)

(Copy of letter December 29, 1944 from James E. Markham to J. M. Houghland was marked as Plaintiff's Exhibit 170.)

(Copy of letter December 20, 1944 from James E. Markham to Equitable Securities Corporation was marked as Plaintiff's Exhibit 171.)

By Mr. Ingoldsby:

Q. I want to ask you what you finally did—what the company did—as a result of that meeting of the board of directors in November, 1944. A. The company sold 20,000 shares of Spur stock to the Equitable Securities Company and gave them an option on 50,000 more.

Q. That was done by resolution of your board of directors, was it? A. That is right.

Q. Who was on the board of directors at that time? A. Mr. Sims, Mr. Paul M. Davis, Mr. Henry Duncan Hines, myself, and the representative of the Alien Property Custodian, but his name escapes me, as they changed rapidly.

Q. Was it Mr. Bradford? A. No, I don't believe it was; I am not sure.

1827. Q. At the time you increased the stock, as you just testified, who constituted the board of directors?

A. The men I have named there.

Q. The men you have named? A. I failed to name one, but I can't recall that one.

Q. Mr. Sims was your lawyer; is that correct? A. That is correct.

Q. Who was Mr. Davis? A. What do you mean by "who"?

Q. What was his position? A. He is president of the American National Bank in Nashville.

Q. He is a very close personal friend of yours, is he not? A. Yes.

Q. Mr. Hines was a member of the board? A. Yes.

Q. He is your brother-in-law? A. Yes. We married sisters.

Q. You were there yourself? A. Yes.

Q. Do you recall whether or not at this meeting of the board a representative—and by "this meeting" I mean the one of November, 1944—was a representative of the Office of the Alien Property Custodian present? A. No.

Q. Who owns the Equitable Securities Corporation? A. I don't know the entire ownership or any substantial number. I couldn't make a statement of that sort. I can tell you who heads it.

Q. Who heads it? A. Mr. Brownlee Currey, I believe it is.

Q. Does Mr. Davis have anything to do with Equitable Securities Corporation? A. That I don't know; not that I know of.

Q. Do you have anything to do with it? A. No.

Q. Did you have any arrangement at the time of this increase with the Equitable Securities Corporation for the purchase of that stock? A. No.

Q. What was the consideration which was paid for this increased stock? A. Book value?

Q. Book value at that time was how much? A. \$13.31, I believe, or \$13.37; I don't recall which.

Q. Per share? A. Per share, yes.

Q. What finally came of the increased stock? A. It was issued in the—Mr. Markham, Alien Property Custodian, ordered it returned and the deal nullified, but we maintained that we had a legal right to

issue stock, and we finally compromised, and our legal rights were left in doubt, but restitution by exchanging money and stock was made, and the company was put in status quo.

Q. If this proposed transaction had gone through, that would have changed Mr. von Opel's position from that of majority stockholder to that of minority stockholder, wouldn't it?

Mr. Burling: I object, Your Honor. Mr. von Opel did not have any position then, in Uebersee, in 1942. The Custodian vested the stock. Title was in the Custodian.

Mr. Ingoldsby: There is a great deal of question about that, particularly when he has the title of Custodian.

The Court: You can handle that on redirect.

Mr. Ingoldsby: What was the question, please?

The Reporter (reading): "Question: If this proposed transaction had gone through, that would have changed Mr. von Opel's position from that of majority stockholder to that of minority stockholders, wouldn't it?"

The Witness: Yes.

By Mr. Ingoldsby:

Q. That was an end which you desired; isn't that correct? A. Yes.

1820 Mr. Ingoldsby: At this time I offer in evidence Plaintiff's Exhibits 169, 170, 171, and 172.

(Plaintiff's Exhibits 169, 170, 171, and 172, were offered in evidence.)

Mr. Ingoldsby: Plaintiff's Exhibit 169 purports to be letter dated November 6, 1944, to Mr. Bradford, signed by Mr. Hines, and includes minutes of the meeting of the board of directors held on December 2, 1944. For the purpose of further identification, these are the minutes of

the meeting at which the increase took place, at which the increase in the stock was voted.

1831 I next wish to offer Plaintiff's Exhibit 172, which is a wire addressed to Spur, at Nashville, Tennessee, signed by Francis J. McNamara, Deputy Alien Property Custodian, which reads:

"Please be advised that the Alien Property Custodian has today taken supervision of the Spur Distributing Company by supervisory order No. 251 which is being forwarded to you today. Hereafter any transactions by the company and particularly the issuance of any additional stock by the company will require the authorization of the Custodian or his duly authorized representative."

(Plaintiff's Exhibit 172 for identification was offered in evidence.)

Mr. Ingoldsby: I offer Plaintiff's Exhibit No. 171, which is a copy of a telegram to the Equitable Securities Corporation, Nashville, Tennessee, signed by James E. Markham, Alien Property Custodian, dated December 20, 1944, which reads:

"Re action of Spur Distributing Co., Inc. in purportedly entering into a contract with you dated December 2, 1944, concerning the issuance of certain stock and other matters, you are advised that such purported action was contrary to the order and instruction of the Alien Property 1832 Custodian and consequently in violation of applicable provisions of law and subject to the penalties therein provided."

(Plaintiff's Exhibit 171 for identification was offered in evidence.)

Mr. Ingoldsby: I now wish to offer Plaintiff's Exhibit No. 170, which is a copy of, I assume, a telegram. I can't tell definitely whether it is a telegram or letter. It is a letter to J. M. Houghland and Alver E. Peterson, Secre-

tary, Spur Distributing Company, Inc., Franklin Road, Nashville, Tennessee, from James E. Markham, Alien Property Custodian, dated December 29, 1944, which reads:

"In view of requested postponement of meeting"—this is a wire—originally scheduled for December 27, 1944 to January 13, 1945, I wish again to make it clear that action taken on or about December 2, 1944 in issuing to Equitable Securities Corporation shares of common stock of Spur and granting an option to purchase further shares, was contrary to my orders and instructions and illegal and void. You are directed to make no disposition of any of the proceeds received by Spur from Equitable nor shall any such funds be in any way committed. Any expenditure or commitment of these funds for the acquisition of real or personal property or otherwise would be illegal and will subject parties to penalties provided by law and other action."

1833 (Plaintiff's Exhibit 170 for identification was offered in evidence.)

By Mr. Ingoldsby:

Q. Now, with reference to the 20,000 shares which were immediately issued, were they actually paid for? A. Yes.

Q. And the money was received by the treasury of Spur? A. That is right.

Q. And as a result of the action taken by the Alien Property Custodian, this money was returned to the Equitable Securities Corporation; is that correct? A. That is right.

Q. And the additional 50,000 shares which had been issued were canceled? A. That is right, or were returned to the company.

Q. Returned; all right.

Now, this morning you testified, did you not, that in 1938 you had a conference with Mr. von Opel and Mr. Frankenberg in New York; is that correct? A. No, sir.

Q. You did not say that? A. No, sir.

Q. When did you say you did have a conference with Mr. von Opel and Mr. Frankenberg in New York? A. I believe

I said that I had a conference with them in 1937.

1834 Q. That was in 1937, you say? A. That is my recollection of it.

Q. And then I believe that you stated that you had a telephone conversation with Mr. von Opel in 1939, when you were in London and he was in Cologne, Germany; is that correct? A. Yes, sir.

Q. And then you had a telephone conversation, transatlantic, with Mr. von Opel in September, 1939, when you were in Nashville and Mr. von Opel was in Zurich, Switzerland; is that correct? A. That is right.

Q. Then you testified about a meeting with Mr. von Opel in Savannah, Georgia, in January, 1941; is that correct? A. That is correct.

Q. With reference to each one of these meeting or conversations, you have provided the representatives of the Government with memoranda, have you not? A. No, sir.

Q. You have not? A. No, sir.

Q. You did not make any written statement to the Government about this? A. No, sir.

Q. Are you sure about that? A. I am positive.

1835 Q. Do you recall executing an affidavit on the 24th day of May, 1944, before a Mary E. Woodall, a notary public? A. I would like to qualify my answer to your statement.

Q. All right. A. I thought you meant the lawyers in this case.

Q. No. I am talking about any representative of the Government. A. Oh, yes.

Q. Well, then, you did give them statements relating to each of the— A. I can state it broadly. I have told the representatives of the United States Government everything I knew and any bit of contact I have had at any time with any Germans.

Q. I assume that they were told at least that much. Now, what I wanted to ask you about was with regard to the meetings or conferences or conversations which I have just described. I wanted to ask you when you first made these statements to the Department of Justice. A. I don't recall.

Q. Could you give us any idea? A. No. I have had so many conferences, I could not.

Mr. Burling: Since counsel for both sides have been associated with the Department of Justice, I suggest 1836 that you clear whether counsel is referring to the F. B. I. as being with the Department. Sometimes the F. B. I. refers to the Department, meaning the lawyers in the Department. It is ambiguous.

Mr. Gallagher: You know they are not separate units.

Mr. Ingoldsby: If Mr. Burling can tell me, it will be all right with me. I am talking about some statements which have been provided us by Mr. Burling. All I want to know is when he made those statements.

Mr. Burling: The ambiguity is between F. B. I. agents and the Department of Justice lawyers, that is all.

Mr. Ingoldsby: That is all right. I can clear that up.

By Mr. Ingoldsby:

Q. You do have a recollection of telling someone in either the F. B. I. or in the Department of Justice about the telephone conversations or conferences which I have just enumerated, do you not? A. I don't have a specific recollection of telling anybody about those except the lawyers in this case, but it is quite possible that I did. I told them everything I knew.

Q. You say you have no recollection of giving— A. No. specific recollection of who or where or when.

Q. Will you agree with me that you did tell somebody in either the F. B. I. or the Department of Justice about the incidents which I have just referred to? A. I 1837 think probably—I could not make an absolute statement to that effect, but I think probably.

Q. Now, my question is, did you get that statement from any prepared memorandum which you had made at the time of the conversations or was it based entirely upon your recollection of the facts? A. I don't even recall when I made the statement. The only thing I can say to you is that I probably did. I told them everything that I knew, which they asked me or that I could recall.

Q. But you have no particular recollection at this time of making any statements regarding the matters which I have just alluded to? A. No. I could not separate a definite statement and a definite time.

Q. Do you recall whether or not you had any records with you at the time that you made any of these statements to the Department? A. No.

Q. How many times would you say you talked to representatives of the F. B. I. or the Department of Justice since January 1, 1942? A. I would be unable to make an estimate.

Q. I want to ask you particularly about the statement which you made this morning. I do not purport to 1838 quote you exactly, but you correct me if I am in error.

Did you say that in the latter part of August, 1939, you were staying at the Carlton Hotel in London and upon your arrival in London you received a telephone call from von Opel from Cologne, Germany, asking you to come and visit him upon the family estate near that city? A. Yes.

Q. That is about it. Now, at that time that was the latter part of August, 1939. Can you establish the date any

more definitely than that? A. I could if I had the information here and you could obtain it or I could obtain it for you. I sailed on the last trip of THE NORMANDIE, and this was immediately preceding that trip, which landed here just a few days before war was declared. The war, I believe, was declared between England and Germany on the 3rd of September, so it was very close to the end of August.

If I were to attempt to say the exact date, I would doubtless be in error.

Q. Very close to the end, in any event? A. Yes.

Q. Now, will you relate the circumstances under which you made that call? Where were you and who placed the call, and just give us any information that you can remember about the placing of that call. A. The first call 1839, was from Fritz von Opel to me, not from me to Fritz von Opel.

Q. All right. With regard to the first call, where did that call come from? A. It came from Cologne, Germany.

Q. And how do you know that? A. Well, that is what the operator said.

Q. You recall definitely that the operator said that it was Cologne, Germany, calling? A. Yes, I do.

Q. What fixes that so vividly in your recollection at this time? A. This is a very unusual circumstance for me.

Q. How do you mean that? A. The world was about to plunge into war and I was over on the other side.

Q. And so it impressed you very definitely that this was a call from Germany and that Germany was about to go to war, and that is what fixed that date? A. Yes. The whole circumstances are quite vivid.

Q. And as a result of that call you later called Fritz von Opel; is that correct? A. The following day, yes, sir.

Q. So at that point we are pretty close to the very end of August, 1839; isn't that right? A. Not very close 1840 to the very end of August, no, but you are getting in the latter quarter of 1939.

Q. All right. It would definitely, then, be some time after August 20, 1939; correct? A. I won't make a definite statement on that, but it must have been in that neighborhood.

Q. Now, will you tell us about your making that call to Mr. von Opel? A. I answered the next day, as I told him I would, and called him back.

Q. And where did you call him? A. Called him through the same exchange, Cologne. He gave me the number to call. I have long since forgotten that.

Q. Do you recall whether it was a hotel or where it was you called him? A. No, I don't. I called a number and an exchange through Cologne, is all I know.

Q. Do you have your hotel bills at the present time from that trip? A. I imagine I have, yes.

Q. Do you have them with you? A. No.

Q. Have you at any time turned them over to the Government? A. No.

1841 Q. That call was definitely made from your hotel, wasn't it? A. Yes.

Q. You are sure about that? A. Very sure.

Q. And your bill would so reflect, I take it, would it?

A. I think so.

Q. That was the occasion when Fritz von Opel stated that he was very insistent that you come, and he said that he wanted you to meet and become acquainted with his father, and he pointed out that, after all, you worked for his father and it would be to your interest, as well as to his father's, that the two of you become acquainted? Is that about the gist of the conversation? A. That is about the gist of it; yes, sir.

Q. You had been in Germany before that, in 1934, hadn't you? A. Yes.

Q. Didn't you go to Wiesbaden in 1934? A. No, sir.

Q. How close did you come to Wiesbaden? A. I don't know just exactly where Wiesbaden is, as a matter of fact. It is somewhere in the Rhine country, I know, in the lower Rhine country, but I don't know where.

Q. You were quite close to it, however, were you 1842 not? A. No.

Q. You were not? A. No. I went through France and Southern Germany and into Switzerland.

Q. In any event, you did not meet Mr. von Opel's father in 1934 when you were in Germany, did you? A. No.

Q. Now, you were in Germany again in 1937, were you not? A. Yes.

Q. Now, who prepared your itinerary at that time? I should change that and say, who prepared your itinerary for that trip? A. I did.

Q. Did Fritz von Opel assist you? A. He wrote me a letter giving me suggestions about places to visit, yes.

Q. Did you visit those places? A. No, not all of them; some of them. I could not answer the question. I can't even recall the series of places. I think he recommended that I visit the Tyrol, and I did visit the Tyrol, and he told me a number of places to visit.

Q. In 1937 did you go to Wiesbaden? A. No. I have never been to Wiesbaden.

Q. You have not been there? A. No.

1843 Q. Do you recall a suggestion from Fritz von Opel that you go to Wiesbaden and view the Wilhelm von Opel swimming pool, which was supposed to be quite a show place in Wiesbaden? A. No.

Q. You do not remember that? A. No.

Q. You do not say it did not happen, do you? A. No. I would not say it did not happen, but I would certainly say very positively I don't recall it.

Q. Have you ever been in Heidelberg? A. Yes.

Q. Do you know how far Heidelberg is from Wiesbaden? A. I don't know where Wiesbaden is.

Q. Don't you know, as a matter of fact, that Heidelberg is quite close to Wiesbaden? A. No, I don't.

Q. But, in any event, neither in 1934 nor in 1937 did you visit Mr. Wilhelm von Opel? A. No.

Q. And such a suggestion was never made by Fritz von Opel? A. Not that I recall.

Q. Now, I want to ask you about the telephone 1844 conversation which you have testified about this morning. I will ask you if you stated that on September 18, 1939, you received a cable from Fritz von Opel from Zurich, Switzerland, and on September 21, 1939, you cabled the Uebersee Corporation and that afterwards—that is, after September 21, 1939—you called Fritz von Opel in Zurich upon the transatlantic telephone and talked to him concerning the proposed sale? Is that correct? A. It is nearly correct.

Q. Will you tell me where it is wrong? A. Well, I couldn't tell you where it is wrong, because I have some thought that I called on the same day that I sent the wires that I put in the telephone call, but if I did not, it was very close.

Q. You mean that you think that you called him on the same day that you sent the cable? A. That I sent the cable to Adler and Company and Frankenberg.

Q. Do you recall that that was on September 21, 1939? A. I think it was, yes.

Q. And how do you fix that day? A. I think I have copies in my files of those wires.

Q. I am reading from a document given us by the Department of Justice. These are not my own ideas.

The occasion when you sent that cable, that was 1845 sent to Mr. Gaeng and not to Mr. von Opel, was it?

A. I sent a cable to Adler and Company, to Frankenberg and Gaeng, and to Uebersee—separate cables.

Q. All in September? A. Calling attention—on the same day, and calling attention to the fact of my rights which I had under the contract with Uebersee.

Q. Whether it was before or after or on the same day, the cable was sent. You did have this transatlantic talk with Fritz von Opel; is that correct? A. I did, yes.

Q. Did you say that he, meaning Fritz von Opel, replied that the proposed sale was greatly against his wishes, that he had done everything he could to prevent it, but could not change his father's mind upon the subject, and that his father insisted that the sale go forward? A. Yes.

Q. And did you also state that "he", meaning Fritz von Opel, "explained to me, as he had done many times before, that while the management of these affairs was to a large degree in his hands, the real control and ownership remained in his father's hands and that his father had directed Mr. Frankenberg to proceed with the sale of the stock." Did you state that or substantially that? A. I think substantially that, yes.

1846 Q. So it is your testimony at the present time that in the latter part of September, 1939, and in the latter part of August, apparently a week or two before Germany and England went to war, Fritz von Opel told you, over transatlantic telephone, that this was his father's property and not his own? A. Yes.

Q. That is your testimony? A. I testified that over transatlantic telephone from Zurich, that in September I was told that. I did not testify that I was told that in August.

Q. You did not testify to that? A. No, sir. All I was told was Fritz' remark that, "After all, you work for my father." There was nothing said about property ownerships in August.

Q. I see. So when you were told over the telephone from Germany to England, or vice versa, that, after all, you worked for his father, you were in effect being told that Spur was his father's property, weren't you? A. I think so, yes.

Q. It is your testimony that you were so told about two weeks before Germany and England went to war? A. That is right.

Q. Are you aware of the difficulty which Wilhelm von Opel had with the German Government as a result of this gift? A. Yes.

Q. And you had known of it for some time?

Mr. Burling: Will you fix the date as to when he knew it?

Mr. Ingoldsby: All right.

By Mr. Ingoldsby:

Q. When did you first learn it? A. Of the German Government?

Q. When did you first learn about the difficulty which Wilhelm von Opel had had with the German Government as a result of the gift which he made to his son Fritz? A. I couldn't state that definitely. I couldn't answer that definitely.

Q. Could you give me the year? A. No, I could not. I had had snatches of information about it, but I could not place the year.

Q. Did you ever talk to Fritz about it? A. About the difficulties?

Q. Yes. A. No. I don't recall a conversation—I recall a conversation with Mr. Hoffacker on the subject.

Q. And it is your best recollection at the present time that you never talked to Fritz about this? A. About the difficulties?

Q. About the difficulties which his father had. 1848 A. No. I don't recall having talked to him about his difficulties.

Q. I want to ask you about when you first learned about Fritz von Opel becoming a Liechtenstein citizen. A. I

first learned it, I believe, from the newspapers in 1940. If I were hazarding a guess, which is what it would be, it would be either in May or June of 1940, when Fritz was interviewed in New York upon his arrival in this country.

Q. And that was the first time that you learned about the Liechtenstein citizenship? A. In that period, certainly. At the time of his arrival at my house was the first time. I could not place it just exactly.

Q. And from then on did you consider him to be a Liechtenstein subject? A. No, sir.

Q. You did not? A. No, sir.

Q. I want to ask you about something else.

Do you have in your possession any correspondence with Fritz von Opel, whether they be telegrams, letters, or anything else, in which he ever told you in writing that which you say he told you over the transatlantic telephone?

A. No, sir.

Q. Have you examined your files carefully to see 1849 whether or not you have any such document? A.

Not with that intent, but I have examined my file.

Q. And you are satisfied that you never received any such written document from Fritz von Opel? A. Yes.

Q. I want to ask you about the occasion when you first learned that Wilhelm von Opel was in any way involved in the ownership of the Spur stock. When did you first learn it? A. At the first directors' meeting at which the German interest appeared, through Mr. Theodore Hoffacker.

Q. What year was that? A. That was in 1932.

Q. And it is your testimony that on various occasions since that date Mr. von Opel repeatedly told you that his father was the real owner of the Spur stock; is that correct? A. No.

Q. That is not correct? A. I did not make such a statement.

Q. You did not? A. No.

Q. Did you make a statement to the Justice Department to the effect that he, meaning Fritz von Opel—and I am talking about the Zurich telephone conversation—"explained to me, as he had done many times before, that while the management of these affairs was to a large degree in his hands, the real control and ownership remained in his father's hands." Do you recall? A. I don't recall, but if the F. B. I. said it, it must be correct.

Q. Well, does that refresh your recollection any as to whether or not Mr. von Opel had told you many times? A. No, I don't recall.

Q. What is your testimony at the present time? Did he or did he not tell you on many occasions that his father was the true owner? A. I would change "many occasions"—I would modify "many occasions."

Q. What modification would you make? A. I don't know that he ever used the exact expression that his father was the true owner, but he had made affidavit as to the ownership, as to the true ownership. I had had a great deal of information on the subject from Mr. Theodore Hoffacker, his representative.

Q. No. I am talking about what Mr. von Opel said. You wanted to modify the statement that he had on many times made a statement pertaining to ownership. You are talking about "he," Fritz von Opel? A. Yes.

Q. My question is, if you want to modify that statement, what modification do you want to make? A. Well, 1851 I would say upon several times.

Q. On several occasions, then; and the occasions to which you refer are all the occasions which you have stated this morning; is that correct? A. I don't know if that is correct, no.

Q. Now, you just stated a moment ago that Fritz von Opel never definitely said that his father was the owner, but he inferred as much; is that correct? A. No; I don't recall having just stated that.

Q. You do not recall saying that? A. No.

Q. Well, did he or did he not tell you in so many words that his father was the owner? A. When?

Q. Any time. A. Yes.

Q. And on how many occasions did he tell you that? A. I can't recall how many occasions. There was no secret about the matter at the time. He had made affidavit about it.

Q. I know about the affidavit. I know all about it. Have you read that affidavit? A. Yes, sir.

Q. Is that the authority for your statement that his father was the owner? A. No.

1852 Q. It is the word of Fritz von Opel himself, isn't that correct? A. That is right.

Q. And that is your testimony; isn't that correct? A. Authority for which statement? The statement I am making right at this moment?

Q. Yes. A. Yes. As regards the Zurich telephone call?

Q. Well, the Zurich telephone call and the others which you attribute to Mr. von Opel.

Now, I want to ask you this. The first time that you knew about Mr. von Opel's father being interested as an owner was in 1932, you stated; is that correct? A. That is right.

Q. And at that time you were president of the Spur Company, were you not? A. I was yes.

Q. And on many occasions since 1932 you have followed the instructions of Mr. Fritz von Opel, have you not? A. Very, very few occasions. I can't recall any instructions from Mr. Fritz von Opel, although it is perfectly possible that there were. I followed the instructions of Mr. Theodore Hoffacker.

Q. Did you ever follow any instructions given you by Mr. Fritz von Opel? A. I never recall one time — I never recall his ever having given me any instructions.

Q. So it is that you do not recall his giving you any; it is not that he gave you any and you ignored them? A. No.

Q. And you on various occasions discussed the company's business with Fritz von Opel, did you not? A. Yes.

Q. And you considered him in effect as your boss, did you not? A. I certainly considered him as a very important part of it, yes.

Q. Now, did you ever have any written instructions from anyone to the effect that Fritz von Opel was acting as the agent for his father? A. I don't recall any such instructions.

Q. Well, then, is it your testimony that you as president of Spur accepted Fritz as the agent of his father, despite the fact that you previously knew that his father was the true owner and that Frankenberg was the financial adviser; is that correct? A. No. I accepted men—first, Theodore Hoffacker, and, next, Mr. Ulrich, who were representatives of whatever interests controlled Uebersée. Mr. von 1854 Opel never interfered in the business.

Q. No. He gave you a completely free hand, didn't he? A. Somebody did, after some period of turmoil. After the company was shown to be profitable and, I hope, well managed, why, there wasn't much interference in later years, particularly after Mr. Hoffacker got out. Mr. Hoffacker occupied a very dominant position as a man giving me instructions.

Q. That is correct in the early days, isn't it? A. That is exactly correct, yes, sir.

Q. Now, did I understand you to state that you did not consider Mr. Fritz von Opel a citizen of Liechtenstein? A. Yes.

Q. Do you recall making a report to the Treasury Department on October 20, 1941—

Mr. Burling: May I see the document you are reading?

Mr. Ingoldsby: I am just asking him if he recalls.

Mr. Burling: Before you read anything into the record, may I see the document?

(A document was handed to Mr. Burling.)

Mr. Burling: Since the document shows on its face that the witness did not make the report, I suggest it is improper to ask him if he recalls making it.

Mr. Ingoldsby: It is made by his agent.

Mr. Burling: If Your Honor please—

1855. The Court: You will have to prove some knowledge on his part.

Mr. Ingoldsby: It shows on its face that it was made by the executive vice president.

The Court: I will have to hear the question before I rule upon it.

Mr. Ingoldsby: The question is whether or not he knows that on the 20th of October, 1941, Mr. H. D. Hines, the executive vice-president of Spur, stated to the Treasury Department, in connection with an application for a license to engage in foreign exchange transactions, that 73,039 shares of Spur stock are owned by Fritz von Opel and are outstanding in the name of Houvis and Company, Nashville, nominee. Pay the proceeds of the dividend due Mr. von Opel to a blocked account in his name, as a national of Liechtenstein, in the American National Bank of Nashville, Tennessee. The company was incorporated in Delaware in 1928. The company does business only in the United States. About 51 percent of the stock of the company is controlled by Fritz von Opel, who is a national of Liechtenstein.

Mr. Burling: I object to the question. The question is, Does this witness know that X, a person who is not a witness here and not a party to the suit, filed a report?

The Court: I will overrule the objection, subject to being connected up.

1856 Mr. Ingoldsby: I can't get it all in in one jump.

The Court: Let him answer yes or no.

By Mr. Ingoldsby:

Q. Did you hear what I have just read from this document? A. I heard what you read, if you will repeat the question.

Q. Do you want to read it? A. No, I don't want to read it.

Q. Do you want to see the document? A. No. I ask you if you will be kind enough to repeat the question.

Mr. Burling: May I have the right to move later to strike?

The Court: Certainly.

Mr. Burling: If he fails to connect it.

Mr. Ingoldsby: My question is—

By the Court:

Q. Do you know if Mr. Hines made that statement? A. Yes, sir.

Q. You knew he made it? A. Yes, sir.

Q. Did you authorize it? A. No, sir.

Mr. Burling: Then, I move to strike it.

1857 The Court: Do you want to ask him any further questions?

Mr. Ingoldsby: Yes.

The Court: Let us wait until he gets through that line.

By Mr. Ingoldsby:

Q. You did not authorize the making of it by Mr. Hines? A. No, sir.

Q. But you stated you did know it was made by Hines?

A. That is right.

Q. Did you take any action by way of advising the Treasury Department that that information was incorrect?

A. No.

Q. You let the Information stay, even though you did not authorize it? A. that is right. I do not say that I did not authorize it. I did not authorize it in the beginning. I approved it.

Q. But you did approve it? A. I approved it in conversation with Mr. Hines. I was out of town at the time it was made, but when I returned and he told me what had been done, it met with my approval.

Q. Well, do you find that in any way in conflict with your statement that you did not consider Mr. von Opel a citizen or a national of Liechtenstein? A. No, I did not make the report. I was not even here.

1858— Q. I am not asking you if you made the report; I am asking you if you find anything inconsistent between your approval of that report and your previous statement that you did not consider Mr. von Opel a citizen or a national of Liechtenstein. A. No, I do not find that in any way inconsistent.

Q. You do not see anything inconsistent in the two? A. No.

Mr. Ingoldsby: Your Honor, I am almost through. I wonder if we might have a 5-minute recess.

The Court: A 5-minute recess.

(A short recess was had.)

By Mr. Ingoldsby:

Q. Now, Mr. Houghland, I wanted to ask you about your testimony this morning regarding your meeting with the F. B. I. in January, 1942, when two F. B. I. agents came to your house. Am I correct in stating that— A. Yes, sir.

Q.—occasion as being January, 1942? A. That is my recollection of it, yes.

Q. And is that the first occasion that you made any statement to the F. B. I. regarding Fritz von Opel? A. I don't recall. There were people there when the freezing order took place. Whether they were F. B. I. people or not, I don't recall.

1859 Q. You do not recall expressly making any statement to the F. B. I. agents about Fritz von Opel prior to January, 1942; is that correct? A. That is the first time I recall it, that is right.

Q. Do you recall at this time the names of the agents that you talked to in 1942? A. No, sir.

Q. And you did not make any memorandum of that meeting at all, did you? A. I don't recall.

Q. Do you recall making any memorandum concerning that meeting? A. No.

Q. Your answer is no? A. No.

Q. Now, is it correct that the way the F. B. I. agents came to your house was to knock on the door late at night, and you invited them into the library? Is that correct? A. Yes.

Q. And they questioned you at some considerable length before they identified themselves? A. No. They shortly identified themselves. They questioned me, and I was reluctant to answer their questions, and then they produced their credentials.

Q. But you did let them into the house and take them into the library before you knew that they were F. B. I. agents? A. Yes.

Q. How did they get into the house? What did they say or do to get in? A. They pretty near put their foot in the door and came in.

Q. And then you sat and talked with them in the library for some time before you discovered they were F. B. I. agents; is that correct? A. For a short time.

Q. Was it during that meeting that you told the F. B. I. about your version of an incident relating to a falcon and Mrs. von Opel? A. To a what?

Q. A falcon, a bird. A. I don't recall anything of that, no.

Q. You do not recall any such statement made by you? A. No.

Q. Do you remember having a conversation with Fritz von Opel regarding a falcon? A. No.

Q. Would you say that you did or did not have any such conversation? A. I would be very much surprised 1861 if I had that conversation about a falcon.

Q. Do you recall showing Mr. von Opel a picture of Mrs. von Opel, which was taken from the society page of a newspaper, in which picture she had a falcon on her arm? A. No.

Q. You do not recall such a conversation? A. No.

Q. Do you recall saying, during that conversation, that it was dangerous for Mrs. von Opel to appear in a picture with a falcon, because Goering was so well known for his falcon hunting? A. No.

Q. You do not recall any such conversation? A. No.

Q. In 1941 you do not recall any such conversation? A. No.

Q. Was it during this conversation with the F. B. I. in January, 1942, that you first told them about the stock of Uebersee being owned by a South American corporation? A. I don't recall the details of the conversation.

Q. Do you recall at any time making a statement to the F. B. I. about the South American ownership of Uebersee stock? A. I don't recall it specifically, but I dare say I did.

1862 Q. Well, will you tell us, to the best of your ability at this time, what it was you told those two F. B. I. agents in January, 1942? A. I don't recall specifically what I told them. I explained the first interval, proving that I myself was not a German.

Q. Anything else? A. They asked me many questions. I don't recall the details of the questions.

Q. So you are unable to elaborate upon that conference in any way? A. That is right.

Q. Do you have any recollection of telling the F. B. I. agents anything about Fritz von Opel's connection with rockets? A. I don't recall it on that occasion, no.

Q. Do you recall telling them that on any occasion? A. I recall commenting on it, yes.

Q. Commenting on it to whom? A. I couldn't tell you whether it was Alien Property Custodian, or friends, or who, or family.

Q. Do you recall what it was you told them? A. I am sure that I engaged in conversation at one time or another during the course of the war about Mr. Seversky's article on Fritz von Opel as the inventor of the rocket, which was published in the New York Times and was 1863 widely talked about in Nashville.

Q. Do you recall what year that was—the Seversky article? A. I think it was in 1943, but I would not be sure of it.

Q. And wasn't the gist of that article that Mr. von Opel had given Seversky, the Russian designer, all the information which he had about the rocket?

Mr. Burling: If Your Honor please, I object to testimony concerning what an article says about von Opel. It would have no bearing—

The Court: I suppose you are trying to connect it up with some testimony his son gave. Why don't you ask him that direct question?

By Mr. Ingoldsby:

Q. You heard your son's testimony the other day? A. Yes.

Q. My question is, Did you receive any information from your son about Fritz von Opel and the rockets? A. Yes. He told me the story of this conversation that evening.

Q. You remember that very distinctly? A. That is right.

Q. Is there anything that makes you remember 1864 that so distinctly? A. I don't know what caused me to remember it so distinctly, no.

Q. I want to ask you about your testimony this morning in which you alluded to the year 1938. Will you tell us again just what it was that Fritz von Opel told you about how the Uebersee shares were held by Swiss? A. He told me that the Uebersee's shares were sold to Swiss owners and that the Swiss owners endorsed the stock certificates in blank, and they were returned to the Opels.

Q. Are you sure that he told you that? A. I am positive.

Q. You could not be mistaken about that? A. I could not.

Q. Are you aware of the fact that the Uebersee's shares are bearer shares? A. No.

Q. You did not know that? A. No.

Q. You appreciate, of course, that bearer shares can not be endorsed in blank, isn't that correct, or endorsed at all? A. I don't know about the Swiss laws.

Q. Now, will you tell us again what it was that Mr. von Opel said about your acquiring Swiss citizenship?

A. He pointed out to me the great difference in income tax that I was paying as contrasted with himself, and the rate of difference of many Americans who had formed foreign holding companies and put their stock in those holding companies.

Q. And what was his suggestion to you? A. His suggestion to me— He said that a change had taken place in the regulations in regard to it and that Americans were denied that right or privilege now, but that by acquiring Swiss citizenship I could enjoy those emoluments.

Q. And did you think that he was making a serious suggestion? A. I didn't really know.

Q. Weren't you sure that he was not? A. It certainly was not serious to me—giving up my American citizenship.

Q. Well, weren't you certain that he was not serious if he made such a suggestion? A. No, I was not.

Q. Are you aware of how long it takes to become a Swiss citizen? A. No, sir.

Q. And, of course, the fact is that you would not save any income taxes, anyway, would you? A. I think you would.

Q. Would you? Well, I will leave that open.

I wanted to ask you about your meeting with Mr. 1866 von Opel in Savannah—

The Court: Are you going to be some time on that?

Mr. Ingoldsby: Yes.

The Court: We will go over until 10 in the morning.

(At 4:15 p.m. an adjournment was taken until Tuesday, January 4, 1949, at 10 a.m.)

1869

PROCEEDINGS

Mr. Ingoldsby: May I proceed, Your Honor?

The Court: Yes.

Thereupon—JOHN MASON HOUGHLAND resumed the stand and, having been previously duly sworn, testified further as follows:

Cross Examination (resumed)

By Mr. Ingoldsby:

Q. Mr. Houghland, I believe that when we recessed yesterday I had asked you whether, in view of your statements, you knew or understood that Wilhelm von Opel was

the owner of Spur stock, or that you knew or understood that Frankenberg was the father's financial agent. I had asked you the question whether you ever received any authorization to permit Fritz to act, and I believe your answer to that question was that you had not received any written authorization. Is that correct? A. To permit Fritz to act?

Q. Yes. A. Yes, in the case of the contract giving me a call on the stock, I believe we were provided with a power of attorney for Fritz to sign for Uebersee.

Q. I see. And the power of attorney was from the 1870 Uebersee Korporation and not from the father?

A. Yes.

Q. Now, you stated in your testimony yesterday, did you not, that you had given the Government representatives at one or another all of the information which you possessed pertaining to Fritz von Opel? A. I think so; I certainly tried to, at least.

Q. Do you recall whether or not you told them anything about a meeting which you had in New York with Fritz von Opel, and some other people in the summer of 1941?

A. I don't recall.

Q. Do you recall such a meeting? A. Yes.

Q. What was the purpose of that meeting? A. It was a directors' meeting, I believe.

Q. Did you meet him at any place in New York other than at the directors' meeting in the summer of 1941? A. Yes; he came up to my hotel room at the St. Regis Hotel.

Q. Who was present there? A. The two of us were alone there for most of the period. Mr. Hines finally came and walked through the room but did not stay.

Q. Do you recall meeting with Mr. von Opel on that occasion at all in the offices of Bayer & Clauson?

A. That was where the directors met.

Q. Was that the occasion when Mr. von Opel censured you severely for reporting that he traveled on a Liechtenstein passport and that his family owned ex-

tensive holdings in Germany? A. As I recall it, that was the occasion at the hotel, but I think there was some of it at the meeting. But the main, frank discussion between the two of us was, I believe, at the St. Regis Hotel.

Q. You don't deny that at least a substantial portion of that discussion took place in the presence of Mr. Bayer?

A. I don't recall Mr. Bayer—it being in his presence.

Q. You don't recall any discussion of it in his presence?

A. No.

Q. Did you report that meeting to representatives of the Government? A. I don't recall.

Q. Do you recall whether or not you told Mr. von Opel on that occasion that it was merely an oversight and that Hines was responsible for it, and not you? A. I did not make that statement.

Q. You did not? A. No. I told Mr. von Opel that I would accept responsibility for it.

1872 Q. But you also told him that you had not done it, didn't you? A. Yes.

Q. You told him that you didn't know about it? A. I did not tell him that. I didn't know about it. I told him that I had not done it but that I took responsibility.

He said, "I am sure you would not have done it."

I said, "Eritz, I am president of the company. There was nothing wrong in it. We reported what the Government asked us to report. I accept full responsibility for it."

Q. Did you have another meeting with Mr. von Opel in New York that year? A. No.

Q. When did you discuss your second seven-year contract? A. In 1940.

Q. That was when the second seven-year contract came up? A. It wasn't a seven-year contract. Both contracts were eight-year contracts, but the first one was retroactive for the year 1933.

Q. Did you have a discussion of that contract? A. I don't recall.

Q. Do you recall in 1941 having a discussion about a seven-year contract and the excess profits tax that related to it? A. No, I don't recall. As a matter of fact, 1873 the second contract had already been written by that time, as I think it was written preceding 1941—1940.

Q. Did you talk to Mr. von Opel about a change in that contract? A. I think so.

Q. Do you recall what that discussion related to? A. I don't recall whether I talked to Mr. von Opel or whether I talked to—or Mr. Ulrich; but the auditors talked to me about changing the contract so that my profit participation would—that is, the management contract—that my profit participation would be before tax.

Q. Who was it that wanted the change in the contract? A. I did.

Q. It made quite a substantial difference to you as to whether or not you received that change in the contract?

A. It would have made a substantial difference to me, yes.

Q. Would you describe what your profit participation was under that contract? A. It was 5 per cent after 12-1/2 per cent had been earned on capital and surplus combined.

Q. Are you sure that that is correct? A. Well, it is reasonably so; I don't have the contract before me.

1874 Q. Isn't it correct that your contract was that you were to get 5 per cent after 7 per cent was earned on the capital stock? A. I think 7 per cent was on the other contract, on the contract which had payable the \$200,000 which was given me in consideration of relinquishing my rights to the stock.

Q. When was the second seven-year contract—or eight-year contract—entered into? A. It was an eight-year contract, and it terminated just eight years ago December 31. I don't remember the date, but it lasted for eight years.

Q. You did not receive the change in contract that you requested, did you? A. No.

Q. Who turned that down? A. I don't know.

Q. Whom did you discuss it with? A. With Bayer & Clauson. They discussed it with me. They originated the idea and brought it to me; that it would not make a substantial difference to the company; that the taxes had greatly increased since I had written the original contract or had signed the original contract; and that they thought, under the circumstances, I should be entitled to a contract which would take that into consideration.

Q. I want to ask you a question about Mr. von 1875 Opel. Will you state the names of all the people that you have talked to concerning Fritz von Opel's deportation? A. I couldn't answer that question completely; I don't know. I doubtless have talked to many people on that subject.

Q. Will you give us the names of any people that you have ever talked to about this? A. Well, I talked to Mr. Jones—I don't know his first name—who is a lawyer in the Department of Justice. I made inquiry of everybody I knew in the Alien Property Custodian's office.

Mr. Burling: His name is Harry Leroy Jones, Mr. Ingoldsby.

By Mr. Ingoldsby:

Q. What inquiry do you mean? A. Well, was he going to be deported?

Q. Whom else did you talk to? A. I can't recall whom else; I doubtless have talked to a number of people about it.

Q. Did you talk to Senator McKellar about it? A. No, I don't think—I don't recall having talked to him about deportation.

Q. Are you sure about that? A. I am not sure; I just don't recall it.

Q. Would you say that you took or made active 1876 efforts to effect the deportation of Fritz von Opel?

A. I would say that I would have been glad to have

made active efforts, but I know of no way I could have effected it.

Q. The question is, Did you? A. No.

Q. I want to return for a moment to your meeting with Mr. von Opel at Savannah, Georgia, in January, 1941. Do you recall stating that Mr. von Opel had come from New York to attend that meeting? A. No.

Q. You don't recall that? A. No.

Q. Do you recall the circumstances under which that meeting was arranged? A. Yes. I wrote Mr. von Opel, I think, at Palm Beach.

Q. You wrote him? A. I think so.

Q. Or did you call him? A. I think I wrote him.

Q. I believe it was your testimony that at this meeting Mr. von Opel told you that the Germans were foresighted people and that if the United States entered the war against Germany and attempted to seize his or his father's property in the United States, it would be discovered to be 1877 in the names of Swiss owners; and that if the Swiss became involved, it would be found that the owners of the Uebersee stock would be a separate corporation not under your company? A. Yes.

Q. Is that correct? A. That is correct.

Q. It is your testimony at present that that is what Mr. von Opel told you, is it? A. Yes.

Q. Are you aware of the fact that in November, 1941, which was just one month before the United States and Germany entered the war, Fritz von Opel transferred the Uebersee stock out of the names of the Swiss and into his own name? A. No.

Q. You never heard that? A. I have heard some comment about it here at this trial, but I didn't know about it.

Q. You didn't know about it before that? A. No.

Mr. Burling: Nor is it a fact, if the Court please.

Mr. Ingoldsby: Do you want to testify, Mr. Burling?

Mr. Burling: I object to counsel's making statements of what the fact is.

The Court: The question has been answered.

By Mr. Ingoldsby:

1878 Q. In 1938; Was it 1948 that you went to see Frankenberg in New York? A. 1937.

Q. How many times did you see Frankenberg, all told?

A. I have seen him three times: once, the last time, at this trial; once in New York in the summer of 1941; and on the occasion in 1937.

Q. In 1937, when you went to see Frankenberg in New York, I believe it was your testimony that you wanted an increase in capital in order to operate some of these small companies; is that correct? A. Yes; to develop that type of operation.

Q. Mr. Frankenberg, you stated, turned that down; is that correct? A. That is correct.

Q. Did you on that occasion make any efforts to take the matter up with Wilhelm von Opel? A. No.

Q. In 1939, when Fritz von Opel advised you that Uebersee's investors were interested in selling, you were very much interested in either their retaining control temporarily or in getting control into hands friendly to you, were you not? A. Yes.

Q. Therefore, at that time you were opposed to the sale, were you not? A. No.

Q. You were opposed to the sale generally in that you knew where the stock was going to go? A. No; I was apprehensive lest my call on the stock might be ignored.

Q. In connection with the call upon the stock and your apprehension with respect to that, did you contact Frankenberg? A. I cabled him; yes.

Q. You cabled him in Zurich? A. Yes.

Q. You also cabled Gaeng? A. I cabled Gaeng.

Q. Did you cable them as representatives of Uebersee? Is that correct? A. Yes.

Q. Or did you contact them as nominees of the stock?

A. I don't know what. I cabled everybody I thought might be involved.

Q. Did you cable Wilhelm von Opel on that occasion? A. No.

Q. Did you make any efforts to get in touch with him? A. No.

Q. In January, 1941, you urged a change in your contract in order to care for the excess profit feature, 1880 did you not? You just testified to that this morning. The summer of 1941, not January. A. I don't recall what you are talking about—an excess profit—

Q. I am talking about the change that you requested in your contract as a result of the excess profits tax. A. It had nothing to do with excess profits.

Q. What did it have to do with? A. It had to do with my participation occurring before tax.

Q. What tax? A. Any general tax.

Q. What tax? A. Income tax.

Q. What tax in particular were you concerned with? A. Any tax.

Q. Had the income tax for corporations changed particularly at that time? A. No.

Q. But the excess profits tax had come into effect, hadn't it? A. Well, I am sure the income tax was involved. I mean it was just a case of participation before tax, that is all, rather than after tax.

Q. Wasn't the thing that brought that matter to a 1881 head and required your bringing up the question the fact that the excess profits tax had come into being and had made a substantial difference in the income which you would receive, whether your participation was figured before or after the tax? A. I don't recall the relationship of the excess profits tax. I don't disclaim it; it is perfectly possible and sounds reasonable.

Q. Isn't that a fact: that that is exactly what it was: that the excess profits tax was the one that was the real

heavy tax and made the most or the substantial difference to you? A. I should think so, yes.

Q. And it did make a substantial difference to you, didn't it? A. Yes; I should think it would.

Q. You didn't get the change in the contract that you wanted, did you? A. No.

Q. On that occasion, did you take the matter up with Frankenberg or with Wilhelm von Opel? A. No. The matter was handled through Bayer & Clauson. They handled it.

Q. Was there ever any occasion when you did take anything up on your own initiative with Frankenberg 1882 or with Wilhelm von Opel? A. I can't say there was any with Wilhelm von Opel. As to Dr. Frankenberg, I think there was, yes, in the case of directions as to dividends, and general business matters of that sort.

Q. You did receive directions from Frankenberg as to dividends? A. Yes.

Q. Did you receive those in writing? A. I am sure we did; he didn't call me.

Q. Did that follow a general pattern, or was it occasional? Tell us something about it. A. There were several instances when the regular routine of dividend distribution was interrupted on order; and, as I recall it, we received our instructions in those matters from Dr. Frankenberg.

At one time dividends were paid at Adler & Company; and there were several changes where dividends went. One time they were paid to a bank in New York, as I recall, and I think our instructions came from Dr. Frankenberg. I am pretty sure they did.

Q. Are you sure about that? A. No, I wouldn't make oath to it, but that is my recollection.

Q. Do you know whether that was during the 1883 period of time when the stock of Uebersee was held by the Adler Bank? A. I don't know; I couldn't say.

Q. You could not say definitely whether or not you did receive any written instructions from Frankenberg; is that

correct? A: I could not say definitely, but I feel sure I did, because we got our instructions from him on the changing of dividend payments.

Q. Did you ever, under any circumstances, receive any instructions from Wilhelm von Opel? A. No.

Q. Mr. Houghland, you consider yourself a reasonable man, don't you? A. Well, I guess we all do, yes.

Q. You are certainly of at least average intelligence, aren't you? A. Thank you.

Q. You agree with that, don't you? A. I think so. I think we all do.

Q. You are aware, are you not, that if Wilhelm von Opel were the true owner of Spur stock in 1939 and had failed to report that fact to the German Government, he would have been subject to very severe penalty? Are you aware of that fact? A. No. I am not familiar with German law.

1884 Q. You are generally familiar with foreign currency regulations, are you not? A. No, I am not—definitely not.

Q. I will ask you to assume that fact. Under those circumstances, would you, if you were in Fritz von Opel's position, or if Wilhelm von Opel were your father, would you have made such statements as you attribute to Fritz von Opel over the trans-Atlantic telephone in 1939? A. He made them under oath in Federal Court in New York.

Q. My question is, Would you? A. Not if I thought it would kill my father; I certainly would not.

Mr. Ingoldsby: That is all.

Redirect Examination

By Mr. Burling:

Q. You testified, I believe, on cross examination, Mr. Houghland, that you endeavored to acquire from the Cus-

todian for your interests, those interests which the Opels had formerly held; is that correct? A. That is correct. I endeavored to acquire it not personally, but I endeavored to get it out of German hands.

Q. Will you state whether prior to the vesting by the Custodian of the Opel interests you had found it helpful or unhelpful to the Spur business to have German interests in the business? A. It was disastrous.

Q. Will you explain that, please? A. Well, when the freezing order took place, the Government said, or the Treasury said—they just blocked our mail box and sealed it with a public notice there; and then they sent a man who sat at our front door at a desk and interrogated everybody that came into the office; and another man who counter-signed every check we had. This was after we had received a license to operate and lasted for a period of slightly over a year—thirteen months, as I recall it.

We were constantly under attack from competitors as to being a German-owned company. Even then, before war was declared, the feeling was very tense, and all this regulation and freezing was disastrous for a retail operation largely operating in the South.

Q. Will you state what action, if any, your competitors took with respect to the German interests in your firm?

A. They advertised in the newspapers: "Don't trade with German or foreign-owned chain stations" and attacked us vigorously and repeatedly by newspaper ads.

Q. Will you state whether or not you had any personal financial interest in Spur Distributing at the time you are speaking of? A. Yes, I did.

1886 Q. Approximately what was your personal stock in that? A. You mean in money or stock?

Q. In dollars. A. That would be very hard for me to just be sure about it, but I should say, in the condition the company was in, \$200,000 perhaps.

Q. Did that represent substantially all of your personal fortune? A. Yes.

Q. In other words, you had yourself invested your entire personal fortune in this corporation; is that correct? A. That is right.

Q. Will you state whether or not you found it helpful or unhelpful to have the stock vested and have it known that the majority of the stock was held by the Alien Property Custodian? A. Unhelpful.

Q. Will you state whether or not you had any motive for desiring to obtain all of that stock and placing it in the hands of American citizens? A. I did, yes, sir.

Q. Will you describe that motive? A. My motive was to free the company from the taint of German ownership, which was a very difficult thing to carry on with the 1887 situation as it was.

Q. That is why you took the steps you described yesterday to obtain all of the stock either for your hands or the hands of fellow American citizens? A. Yes.

Q. You were asked concerning a report which was made by Spur to the United States Treasury.

Mr. Burling: May I have that, please?

Mr. Ingoldsby: I do not believe it was marked (handing a paper to Mr. Burling).

By Mr. Burling:

Q. I believe you were asked about a report which was filed, an application for license which was filed, by Spur Distributing; is that correct? A. Yes.

Q. Will you state whether or not you personally prepared that report? A. I did not.

Q. Did you see it at any time prior to its being filed with the Treasury? A. No.

Q. When did you see it for the first time? A. The first time I ever saw the report was after I had seen Fritz in

